

REMARKS

By this Amendment, new dependent Claims 23-26 have been added. Accordingly, Claims 1 and 3-26 are pending, with Claims 1, 10, and 20 being independent.

Applicant wishes to thank Examiners Baron and Harper for the courtesies extended to Applicant's undersigned representative during the telephone interview on July 22, 2009.

During the interview, Applicant's representative indicated that Applicant properly requested suspension of prosecution under 37 CFR § 1.103(c), because the Request for Continued Examination ("RCE") transmittal filed on March 16, 2009 with Applicant's Submission traversing the rejections included the requisite request, along with a specified three-month suspension period and the appropriate fee under 37 CFR § 1.17(i). As such, the present application was subject to a three month suspension of prosecution and the Office Action dated April 29, 2009 should not have been issued. Examiners Baron and Harper indicated that they would confer with the Office of Petitions to determine whether Applicant properly requested suspension of prosecution. Examiners Baron and Harper also agreed that should any of the claims be rejected in a next PTO Office Action, the Office Action would be non-final.

Applicant's representative also provided arguments distinguishing Applicant's independent claims from the Miao reference, as will be discussed below, and indicated that Applicant intends to present new claims before expiration of the suspension period. Examiners Baron and Harper indicated that they would take into consideration Applicant's arguments and new claims.

Claims 1, 3-5, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Miao, Claim 6 stands rejected under 35 U.S.C. § 103(a) as being obvious over Miao in view of Chen, and Claims 7 and 10-22 stand rejected under 35 U.S.C. § 103(a) as being obvious over Miao in view of Strawn.<sup>1</sup>

Applicant respectfully traverses the aforementioned rejections for the reasons set forth on pages 2-3 in the Submission Accompanying Request for Continued Examination filed March 16, 2009. Specifically, Miao fails to teach or suggest, for example, monitoring, for the at least one period of time, a buffer depth of the buffer, as particularly recited in independent Claim 1. In contrast to Applicant's claimed invention, Miao sets and updates an additional delay  $t_a$  for a buffer based on a determined

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<sup>1</sup> Applicant respectfully notes that the Office Action dated April 29, 2009 does not appear to address Applicant's arguments presented in the Submission Accompanying Request for Continued Examination filed March 16, 2009.

network delay  $t_n$  and an optimal delay  $t_{ed}$ . See, e.g., Miao, col. 5, lines 4-19. Setting and updating the delay  $t_a$ , as disclosed by Miao, clearly is different than monitoring a buffer depth of the buffer, as in Applicant's claimed invention.

As indicated on page 3 of the aforementioned Submission, for reasons similar to those discussed above for Claim 1, Maio also fails to teach or suggest measuring buffer depth over a period of time and periodically measuring buffer depth, as recited in independent Claims 10 and 20, respectively.

The Strawn and Chen references fail to cure Miao's deficiencies noted above.

In view of the foregoing, Applicant respectfully requests withdrawal of the outstanding rejections.

A prompt Notice of Allowance is respectfully solicited.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (A-10046) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

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